IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MICHAEL J. IANNONE, JR., and NICOLE A. JAMES, as plan participants, on behalf of the AUTOZONE, INC. 401(k) Plan, and on behalf of others similarly situated,	)	
Plaintiffs,	)	CLASS ACTION
v.	)	Case No.: 2:19-cv-02779-MSN-tmp
AUTOZONE, INC., as plan sponsor, BILL GILES, BRIAN CAMPBELL, STEVE BEUSSINK, KRISTIN WRIGHT, MICHAEL WOMACK, KEVIN WILLIAMS, and RICK SMITH, individually and as members of the AUTOZONE, Inc. Investment Committee, and NORTHERN TRUST CORPORATION and NORTHERN TRUST, INC., as Investment fiduciaries,	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM OF LAW IN
SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL

Plaintiffs and Class Representatives Michael Iannone and Nicole A. James submit the following Memorandum of Law in Support of their Unopposed Motion for Final Approval of the proposed settlement ("Settlement") of the claims against Defendants Northern Trust Corporation and Northern Trust Investments, Inc. (collectively, "Northern Trust").

I. INTRODUCTION

Plaintiffs first filed this case against Defendant AutoZone, Inc. ("AutoZone") on November 13, 2019, under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §

1001 *et seq.* ("ERISA") to recover losses arising out of the mismanagement of the AutoZone, Inc. 401(k) Plan (the "Plan"). (Doc. 1). On September 22, 2021, the Plaintiffs filed their Amended Complaint adding Northern Trust as a Defendant.

After four (4) years of litigation and a series of mediations and arm's length negotiations, Plaintiffs and Northern Trust (the "Settling Parties") reached a class-wide settlement (the "Settlement"). In the four years of litigation that preceded the Settlement, the Settling Parties engaged in a robust pleading and motion practice; voluminous document discovery involving the review of more than 120,000 pages of financial documents and other information; twenty-two (22) fact witness depositions and class certification; nine expert reports, six expert depositions, and three *Daubert* motions; and trial preparation for a seven-day trial. On the eve of trial, following two scheduled mediations and arm's length negotiations, the Class Representatives and Northern Trust reached an agreement to resolve the claims against Northern Trust for $2.5 million dollars in cash. The claims against AutoZone were not resolved and went to trial in October 2023. The case against AutoZone presently is under advisement.

On December 7, 2023, following the conclusion of the AutoZone bench trial, Class Representatives filed their motion and memorandum for preliminary approval of the class action settlement with Northern Trust. (Doc. 422). On February 29, 2024, the Settling Parties filed a joint supplemental brief in response to the Court's Order requiring additional information regarding the Settlement. (Doc. 431). On August 21, 2024, the Court granted preliminary approval to the Settlement and amongst other things, directed Notice to be disseminated and set a fairness hearing for November 21, 2024. (Doc. 437, at 22).

After the Preliminary Approval Order was entered the Settlement Administrator, RG2 Claims Administration, LLC ("RG2"), obtained the list of class members from the Plan's

recordkeepers, and on September 23, 2024, mailed the short-form Notice to 23,591 class members. On September 23, 2024, RG2 also created a Settlement Website at www.ntaz401ksettlement.com which contained the full long-form Notice, relevant case documents such as the operative Complaint, Class Certification Order, and all documents filed as part of the Settlement approval process. On October 16, 2024, RG2 mailed 210 additional notices to beneficiaries, while continuing to mail out supplemental notices to any addresses returned as undeliverable with forwarding addresses. As of October 22, 2024, RG2 successfully mailed direct Notice to 99% of the 23,801 Settlement Class Members. *See,* Declaration of Teresa Y. Sutor of RG/2 Claims Administration LLC Regarding Notice to Class (Doc. 439-1), ¶¶ 6-13.

Reception to the proposed Settlement has been favorable. To date, there have been no objections filed. *See* Doc. 439-1, ¶ 14. All communications received by Class Counsel in relation to the Settlement have been positive.

Counsel for both sides are experienced in complex ERISA litigation and are well-positioned to assess the risks and merits of the case. The Court is also aware of the hard-fought nature of this litigation from the extensive summary judgment proceedings, resulting in the 149-page Opinion from the Chief Magistrate, followed by the bench trial on the claims against AutoZone after this resolution was announced. (*See* Doc. 437, at 8-9). In the face of significant risks of an adverse outcome or the potential for lengthy delays and appeals, the Settlement represents a meaningful and substantial recovery for the Settlement Class, particularly in light of Northern Trust's limited exposure compared to AutoZone.

As set forth herein, the Settlement is fair, reasonable, and adequate and merits final approval under both Fed. R. Civ. P. 23 and Sixth Circuit precedent. Plaintiffs have requested the Court: (a) to grant final approval to the Settlement pursuant to Federal Rule of Civil Procedure

23(e); (b) to certify the conditionally-certified Settlement Class appointing the conditionally-certified Class Representatives and Class Counsel; and, (c) to enter a Final Judgment and Order terminating the litigation between the Plaintiffs and Northern Trust, releasing claims of the Settlement Class members against the Northern Trust. Plaintiffs' request for approval of the Settlement is based upon the moving papers, this memorandum, declarations and other supporting materials; the motion for an award of attorney's fees, expenses, and incentive awards, filed contemporaneously herewith, together with the supporting memorandum, declarations and other supporting materials; the pleadings of record; the arguments and representations of counsel; the evidence presented at the trial of this case; all other matters brought before the Court; and, for good cause shown.

II. BACKGROUND

A. Procedural Background

As stated in the Preliminary Approval Order, "Plaintiffs and Northern Trust participated in voluminous discovery and litigated this case up to the first day of trial." (Doc. 437, at 14). Plaintiffs filed their Complaint against Defendant AutoZone, Inc. on November 13, 2019. (Doc. 1). The Class Representatives were participants in an ERISA defined contribution plan sponsored by their employer, AutoZone. (*Id.*). Plaintiffs filed their Amended Complaint naming Northern Trust Corporation and Northern Trust, Inc. as Defendants (among others) on September 22, 2021. (Doc. 85).

On November 15, 2021, Northern Trust filed a motion to dismiss for failure to state a claim. (Doc. 117). On December 1, 2021, the Plaintiffs and Northern Trust agreed to a stipulation of dismissal as to the breach of duty of loyalty claim filed against the Northern Trust and Northern

Trust agreed to drop their Motion to Dismiss and file and Answer. (Doc. 121). On December 17, 2021, Northern Trust filed their Answer to Plaintiffs' Amended Complaint. (Doc. 131).

On February 28, 2022, Plaintiffs filed a Motion for Class Certification. (Doc. 172-73). On April 1, 2022, the Northern Trust joined the AutoZone Defendants in opposing Plaintiffs' request for Class Certification. (Doc. 181). On August 12, 2022, the Chief Magistrate Judge issued a Report and Recommendation to Certify a Class. (Doc. 205). On August 26, 2022, the Northern Trust joined the AutoZone Defendants in objecting to the Magistrate's Report and Recommendation regarding Class Certification. (Doc. 209). On December 7, 2022, the Court adopted the Report and Recommendation. (Doc. 239).

On January 13, 2023, the Northern Trust joined the AutoZone Defendants in filing a Motion to exclude the testimony of Plaintiffs' experts. (Doc. 247-50). On February 3, 2023, the Northern Trust moved for Summary Judgment. (Doc. 279-88). On August 9, 2023, the Chief Magistrate issued a Report and Recommendation as to the Motions to exclude Plaintiffs' expert testimony which was not objected to by any party. (Doc. 338).

On October 10, 2023, the Northern Trust filed various Motions in Limine. (Doc. 370-72; 376-78). On October 11, 2023, Judge Pham issued a Report and Recommendation as to the Motions for Summary Judgment. (Doc. 380).

On October 16, 2023, all parties attended a Pre-Trial Conference with the Court. (Doc. 383). On October 16, 2023, Northern Trust moved to continue trial. (Doc. 382). On October 18, 2023, the Court denied the motion to continue trial and set a pre-trial conference on October 20, 2023. (Doc. 386). On October 20, 2023, the Court held a pre-trial status conference and entered a Pre-Trial Order. (Doc. 389-90).

On October 22, 2023, the Class Representatives and Northern Trust reached a settlement. On October 23, 2023, Northern Trust and Plaintiffs reported the settlement with the Northern Trust to the Court and trial began against the AutoZone Defendants. On October 31, 2023, the trial against the AutoZone Defendants concluded.

On December 7, 2023, the Class Representatives filed their motion and memorandum for preliminary approval of the class action settlement. (Doc. 422). On February 29, 2024, the Settling Parties filed a joint supplemental briefing in response to the Court's Order requiring additional information regarding the Settlement. (Doc. 431). On March 29, 2024, the Court adopted the Report and Recommendation regarding Summary Judgment. (Doc. 432).

On August 21, 2024, the Court granted preliminary approval to the Settlement and set a fairness hearing for November 21, 2024. (Doc. 437, at 22).

B. Plaintiffs Engaged in Extensive Motion Practice and Discovery

Plaintiffs engaged in extensive discovery and motion practice throughout the course of these proceedings. Plaintiffs' counsel engaged qualified experts to render their opinions on defendants' liability and exposure, reviewed tens of thousands of documents including extensive financial data and spreadsheets, issued subpoenas to multiple third-parties to connect the evidence, deposed multiple corporate and fact witnesses, and prepared to present their case against the Northern Trust at trial (and did proceed through trial against the non-settling Defendants).

There are over 400 docket entries in this matter, totaling almost 25,000 pages, and the parties have engaged in substantial motion practice, including the following: Motion to Dismiss; Motion for Class Certification; Motions to Compel; Motions to Maintain Confidentiality; Motions to Exclude Experts; Motions for Summary Judgment; and Motions in Limine. This is in addition

to pre-trial and post-trial briefing, as well as various objections to reports and recommendations entered by Judge Pham.

Class Counsel spent considerable time and resources conducting discovery, including deposing twenty-two (22) witnesses, preparing their own expert witness for multiple depositions, and analyzing over 21,000 documents produced in this case by the parties and subpoenaed third-parties.

Throughout the course of this lawsuit, the Class Representatives also routinely assisted in the review and production of documents from their own records, document discovery, depositions, and trial preparation and attendance. Throughout, Class Representatives stayed apprised of the developments in the litigation to fulfill their duties to the Class. Class Representatives both travelled out of town to have their depositions taken and to attend trial. Plaintiff James took off work costing several thousand dollars in pay and Plaintiff Iannone delayed business opportunities to work on this case. Their participation in this case cost them not only time and money, but also the risk associated with bringing a lawsuit against not just an employer or former employer, but a Fortune 500 company. The Class would receive nothing if not for their efforts. (*See* Doc. 431-3, Affidavit of D.G. Pantazis dated February 29, 2024, ¶¶ 12-16).

C. The Parties Negotiated the Settlement

As the litigation progressed through motion practice and discovery, the Parties commenced arms-length settlement negotiations, taking into account the potential recovery and the risks involved. On October 27, 2022, the parties conducted a mediation with David Geronemus of JAMS Mediation Group. While this original session did not result in a resolution, it did lay the groundwork for future negotiations. On September 6, 2023, the parties reconvened settlement discussions with Mr. Geronemus and set a second mediation for October 3, 2023. This mediation

was eventually canceled. However, the Plaintiffs and Northern Trust continued settlement discussions through the eve of trial, and on October 22, 2023, were able to reach a resolution. The next day, Northern Trust and the Plaintiffs ("the Settling Parties") informed the Court of the settlement.

Class Counsel and the Class Representatives weighed the pros and cons of settlement with Northern Trust. As part of the deliberations, Class Counsel and Class Representatives evaluated the dollar amount of the settlement, the relative culpability of Northern Trust to that of the AutoZone Defendants, the length of Northern Trust's tenure and its resignation as investment advisor to AutoZone, the likely testimony of Northern Trust, and the strategy in proceeding to trial against only one adverse party (AutoZone) while also maintaining the ability to obtain testimony from Northern Trust via its corporate representative.

Ultimately, Class Counsel and the Class Representatives agreed it made sense on behalf of the Class to settle with Northern Trust in the manner set forth in the Settlement Agreement. In addition to the monetary component, the Settlement removed an adverse party from the courtroom that had significantly less exposure than the remaining defendant, AutoZone. This permitted Plaintiffs to focus their efforts at trial on the most culpable defendant. Pursuant to the Settlement, Northern Trust agreed to make its corporate representative, Richard Campbell, available to testify at the trial of the case.

D. Terms of the Settlement Agreement

1. Class Definition

On August 21, 2024, the Court granted preliminary approval to the following class, consistent with its previous Order granting Class Certification:

> All persons, other than AutoZone or Individual Defendants, who are or were participants as of November 11, 2013 in the Plan, and invested in any of the GoalMaker Funds including (i) beneficiaries of deceased participants who, as of November 11, 2013, were receiving benefit payments or will be entitled to receive benefit payments in the future, and (ii) alternate payees under a Qualified Domestic Relations Order who, as of November 11, 2013, were receiving benefit payments or will be entitled to receive benefit payments in the future.
>
> Excluded from the Settlement Class are (a) any person who was or is an officer, director, employee, or a shareholder of 5% or more of the equity of AutoZone or is or was a partner, officer, director, or controlling person of AutoZone; (b) the spouse or children of any individual who is an officer, director or owner of 5% or more of the equity of AutoZone; (c) Plaintiffs' counsel; (d) sitting magistrates, judges and justices, and their current spouse and children; and, (e) the legal representatives, heirs, successors and assigns of any such excluded person.

(Doc. 437, at 6).

2. Benefits to the Class Members

In its Order granting Preliminary Approval to the Settlement, the Court accurately described the terms of the Settlement as follows:

> The Settlement provides that Northern Trust will pay $2,500,000.00 "to compensate Class members for their alleged losses, as well as to pay Class Counsel's attorneys' fees and expenses, Administrative Expenses of the Settlement, and the Class Representatives' incentive awards if ordered by the Court." (ECF No. 422-1 at PageID 24649.) This amount constitutes the full Settlement amount. (See id. at PageID 24686 ¶ 7.2.) Notably, compensation to the putative class members comes from the "Net Settlement Fund," which is the portion of the $2,500,000 left after payment of attorneys' fees and expenses, administrative expenses, and the incentive awards. (Id. at PageID 24687–88 ¶ 8.2.3.) A "Plan of Allocation" will govern the calculation, allocation, and distribution of the Net Settlement Fund to the class members. (Id.) Each class member will receive the same amount. (ECF No. 422-1 at PageID 24665.)
>
> In exchange, the class members will agree to dismissal of the action against Northern Trust and to the release of any claims as to Northern Trust's actions administering and managing the Plan. (ECF No. 422-1 at PageID 24649; ECF No. 422-2 at PageID 24681–82.)

(Doc. 437, at 8).

3. Fees, Costs, and Service Awards

Pursuant to the Settlement Agreement, Class Counsel has applied to the Court for an award of attorneys' fees and expenses equaling one-third of the total settlement fund via its recently filed fee petition. In addition, Class Counsel has requested expenses totaling $435,956.42. (*Id.*). Class Counsel has also requested a service award for each Class Representative totaling $10,000 each. (*Id.*).

The Court previously noted, "33.3% is within the range of typical attorneys' fees in cases such as this one", and the lodestar figure confirms the reasonableness of the requested fee amount". (Doc. 437, at 10-11). The Court also held that it "does not find the requested Plaintiffs' awards unreasonable". (*Id.*, at 14). These holdings are consistent with recent decisions in this district such as *In re Fam. Dollar Stores, Inc.*, 2024 U.S. Dist. LEXIS 97141.

Notably, nothing has changed since the Court's entry of the Preliminary Approval Order in which the Court found the attorneys' fees and service awards to be reasonable, militating in favor of approval of the Settlement. If anything, the response from the Class after receiving Notice further confirms the appropriateness of the awards.

E. The Settlement was Well Received

The benefits offered in the Settlement were well received. Since the publication of the settlement website and mailing of class-wide Notice, there have been zero objections received. Doc. 439-1, ¶ 14. Class Counsel fielded multiple phone calls from class members who received notice, and all feedback received was favorable and in support of the Settlement. (Doc. 440-2, ¶ 12).

F. Notice was Widely Disseminated

In evaluating the Notice procedures provided in the Settlement Agreement, the Court found "the proposed Notice sufficient" and directed the parties to mail a short-form postcard Notice to each Class Member, establish a settlement website with the long-form Notice, and set up a telephone support line. (Doc. 437, at 16). Consistent with these directives, Class Counsel engaged RG2, a nationally known settlement administrator, to obtain the list of Class Members from the Plan recordkeepers and mail out the postcard Notice by September 23, 2024. *See* Doc. 439-1, ¶¶ 6-13. RG2 obtained the names and addresses of all Plan participants who invested in any funds included in Goalmaker from November 11, 2013, to August 21, 2024. *Id*. RG2 also obtained the list of excluded individuals to remove from the list when the time to allocate the Settlement arrives. (*Id*.). In total, the Class includes 23,801 Members. (*Id*.).

RG2 also established a settlement website, www.ntaz401ksettlement.com, reflecting the long-form Notice, FAQs, and uploaded various relevant case documents for all to review, including all settlement paperwork. (*Id*.). RG2 established a toll-free support line and P.O. Box to field any inquiries and provided Class Counsel's contact information on the website. (*Id*.).

In sum, Class Counsel and the Settlement Administrator complied with the Court's directive in the Preliminary Approval Order and provided a robust Notice program to the Class.

III. THE PROVISIONALLY CERTIFIED SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED AND THE CLASS REPRESENTATIVES AND CLASS COUNSEL FINALLY APPOINTED

As the Court noted in its Preliminary Approval Order, the "proposed class is nearly identical to the class that this Court has already certified under Fed. R. Civ. P. 23(b)(1) ... the Court need not consider the appropriateness of preliminary certification under Rule 23(e) and conditionally recertifies the following class". (Doc. 437, at 6). The Court determined that the

Action may proceed as a non-opt out class action under Fed. R. Civ. P. 23(a) and 23(b)(1). (*Id.,* at 6-7). Lastly, in evaluating the Settlement in accordance with the Rule 23 factors, the Court found "the proposed Settlement fair, reasonable, and adequate". (*Id*., at 7).

Since the entry of Preliminary Approval nothing has changed to warrant the reversal of the approval previously provided. Indeed, the only significant development since Preliminary Approval has been a positive response to the Notice. Accordingly, for the same reasons the Court granted Preliminary Approval, the Court should now grant final certification to the Class and finally appoint the Class Representatives and Class Counsel so that the Settlement may be finalized and effectuated. *In re Fam. Dollar Stores, Inc*., 2024 U.S. Dist. LEXIS 82088, *25 ("There has been no information presented to alter the Court's previous conclusions. For the same reasons the Court granted preliminary approval, the Court grants final certification of the Class and final approval of the appointment of the Class Representatives.").

IV. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR FINAL APPROVAL UNDER RULE 23(e) and SIXTH CIRCUIT LAW

The Settlement satisfies the four factors under Fed. R. Civ. P. 23(e)(2) for determining whether a settlement is "fair, reasonable, and adequate," namely that: (i) the class representatives and class counsel have adequately represented the class; (ii) the proposal was negotiated at arm's length; (iii) the relief provided for the class is adequate; and (iv) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(A)-(D).

Sixth Circuit law favors and encourages settlements. This is particularly true in class actions and other complex matters where the inherent costs, delays, and risks of protracted litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See, e.g., Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of Am. v. Gen. Motors*

Corp., 497 F.3d 615 (6th Cir. 2007) ("*UAW*") (noting "the federal policy favoring settlement of class actions").

A. The Settlement Satisfies Each of the Rule 23(e) Factors

1. <u>The Class Received Adequate Representation</u>

As stated in the Preliminary Approval Order, the "Court previously found the Class Representatives to have satisfied the requirements of Rule 23(a)(4), including the retention of qualified counsel". (Doc. 437, at 7). The Court then noted that it "has seen nothing to undermine that finding of adequacy as to the Class Representatives or Plaintiffs' Counsel and parties do not contest it now". (*Id*.). Nothing has occurred since the granting of Preliminary Approval to justify reversing the Court's finding of adequacy of representation. If anything, the steps taken by Class Counsel and the Class Representatives to finalize this settlement further support a finding of adequacy of representation. In any event, such a finding is justified by the significant work performed in this case by the attorneys for the Class, as well as the Class Representatives, as set forth in the Response to Order Directing Supplemental Briefing and the recently filed Motion for Attorneys' Fees. *See Generally* Doc. 431 and Doc. 440. Accordingly, this factor supports final approval of the Settlement.

2. <u>The Settlement Was the Product of Arm's Length Negotiations</u>

The Settlement was negotiated at arm's length, satisfying Rule 23(e)(2)(B). Courts consistently approve class action settlements reached through arms-length negotiations after meaningful discovery. *See Johnson v. W2007 Grace Acquisition I*, Inc., 2015 WL 12001269, at *6 (W.D. Tenn. Dec. 4, 2015) ("Discovery provides a level playing field for negotiations and ensures that the negotiations are informed rather than the product of uneducated guesswork.").

In granting Preliminary Approval, the Court noted the following:

> Based on the Court's interactions with counsel and its knowledge of the entire record in this case, the Court has no concerns about collusion or the nature of the negotiations in this matter. It also notes that the parties engaged a neutral mediator in its efforts to resolve this matter, which further dispels any question about collusion.

(Doc. 437, at 7-8). Nothing has changed in this regard since the granting of Preliminary Approval. Thus, this factor also supports final approval of the Settlement.

3. The Settlement Provides Adequate Relief to the Class

Rule 23(e)(2)(c) provides that the relief to the class must be adequate, taking into consideration (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). The Court previously found in its Order granting Preliminary Approval that each of these factors support approval of the Settlement. (Doc. 437, at 7-14). Since the granting of Preliminary Approval, nothing has changed to suggest approval of the Settlement is not warranted.

Specifically, the Settlement provides $2,500,000.00 to the Class. The Net Settlement Fund (the total Settlement Amount minus attorneys' fees, expenses, and administrative expenses) shall be allotted to the Class according to the previously submitted and approved Plan of Allocation. Each class member will receive the same amount of money, and all non-excluded Class Members will receive money without any additional activity on their own behalf. In exchange, Class Members will agree to dismissal of this lawsuit against the Northern Trust Defendants and a release of their claims.

As the Court previously noted, this "settlement would avoid further costs, risks, and delays of continued litigation." (Doc. 437, at 8). The Court previously determined the "proposed method of processing claims and distributions also appears efficient." (*Id*., at 9).

In regard to attorneys' fees, the Court previously held that "the percentage of the fund method is sufficient under the circumstances of this case." (*Id*.). In doing so, the Court stated that it "is more familiar with the amount of work Counsel has performed in this matter than it usually is when evaluating a request for attorneys' fees and does not see the requested fees as disproportionate to the amount of work performed". (*Id*.). The Court found that there was not a risk of settling for too low of a recovery to obtain a larger fee compared to the time invested, because "Plaintiffs' Counsel litigated this case with Northern Trust up to the first day of trial". (*Id*., at 10).

In the Preliminary Approval Order, the Court noted that "the highest requested percentage - 33.3% - is within the range of typical attorneys' fees in cases such as this one". (*Id*.). The Court found "the lodestar figure confirms the reasonableness of the requested fee amount" because at "the Court's request, Counsel addressed and calculated the lodestar for their work in this case, comparing it to national rates for ERISA class actions in the Sixth Circuit." (*Id*.). The Court stated that Class Counsel's "thorough calculations - and their representation that those calculations do not include over 600 hours spent following the Settlement - demonstrate the reasonableness of their request." (*Id*.).

Lastly, "the only agreement relevant here is the Settlement Agreement," as the Court found in its Rule 23(e)(3) analysis.

These factors have been bolstered by the additional work done by Class Counsel to effectuate the Notice plan and submit paperwork supporting Final Approval of this Settlement. These factors militate in favor of Final Approval.

4. The Settlement Treats Class Members Equitably

As required by the fourth prong of Rule 23(e), the Settlement treats members of the Settlement Class equitably relative to each other. The Court previously noted that the "Settlement subjects each class member to the same release, and one's release does not affect the relief the other class members will receive". (*Id*., at 12). While Class Members with current accounts in the Plan will receive their payment as a deposit into their account, former participants will simply receive a check, "this distinction [did] not raise concerns with the Court". (*Id*.).

The Court did request additional briefing to explain the propriety of providing equal distributions to each Class Member despite varying account balances, and the Parties provided a detailed explanation that satisfied the Court's concerns. (*Id*.).

The Court also evaluated the propriety of the requested incentive awards ($10,000 each) for the Class Representatives in light of the equitable requirement under Rule 23. In support of this request, Class Counsel represented that the Class Representatives' work in this case was extraordinary. (*See* Doc. 431, at 4-8 and Doc. 431-3, at 4). The Court determined that "[b]ased on Counsel's representation and considering the awards' relatively low ratio to the Settlement amount, the Court does not find the requested Plaintiffs' awards unreasonable in this case or likely to have constituted an inappropriate incentive to settle".

In short, nothing has changed since the entry of Preliminary Approval to reverse the findings that these factors support approval of the Settlement, and Final Approval is warranted.

B. Evaluation of the UAW Factors Similarly Supports Final Settlement Approval

The Sixth Circuit's factors for considering a settlement's fairness, reasonableness, and adequacy also support Final Approval: (1) risk of fraud or collusion; (2) complexity, expense and likely duration of the litigation; (3) amount of discovery engaged in by the parties; (4) likelihood of success on the merits; (5) opinions of class counsel and class representatives; (6) reaction of absent class members; and (7) public interest. *See UAW*, 497 F.3d at 631. As the Court acknowledged in its Preliminary Approval Order, two factors overlap with Rule 23(e) requirements and have already been addressed *infra*: (1) the risk of fraud or collusion, and 2) the likely costs of further litigation. The remaining unique factors also support Final Approval as further addressed below.

1. Amount of Discovery Engaged in by the Parties

In its Preliminary Approval Order, the Court found:

> This factor considers whether parties have conducted enough discovery to be able to sufficiently assess the merits of a proposed settlement. *Kritzer v. Safelite Sols., LLC*, 2012 U.S. Dist. LEXIS 74994, 2012 WL 1945144, at *7 (S.D. Ohio May 30, 2012). Here, Plaintiffs and Northern Trust participated in voluminous discovery and litigated this case up to the first day of trial. That work included, among other things, conducting twenty depositions, reviewing of thousands of documents and financial data, and engaging in significant motions practice. (ECF No. 422-1 at PageID 24667.) This factor supports preliminary approval.

Doc. 437, at 14. Nothing has changed since the entry of Preliminary Approval to reverse the amount of work done in discovery in this litigation. Class Counsel's fee petition also further highlights the amount of work performed in this case. This factor supports Final Approval.

2. Likelihood of Success on the Merits

In the Preliminary Approval Order, the Court noted that the "likelihood of success on the merits provides a gauge from which the benefits of the settlement must be measured." (internal citations omitted). The Court then stated:

> While Plaintiffs have proceeded through trial against other Defendants, that outcome has not yet been determined. Regardless, the Court cannot say with certainty what the likelihood of success would be as to Northern Trust because it played a different role in this case than the other Defendants. The record in this matter does make clear, however, that both Plaintiffs' and Northern Trust would continue to vigorously litigate their relative claims and defenses absent settlement. Indeed, Northern Trust has adamantly maintained, for example, that it did not have a fiduciary duty to monitor recordkeeping fees and services, and its request for summary judgment on this issue has been denied. (See ECF No. 432 at PageID 24828.) It has also continuously held that it prudently advised the AutoZone Investment Committee in its role as advisor to the Plan. Plaintiffs, of course, claim that Northern Trust had a duty to monitor recordkeeping fees and breached it, in addition to violating its fiduciary duty to the Plan in other ways. Further litigation of these issues would necessitate further effort and expense to resolve, thus supporting Plaintiffs' and Northern Trust's intention to settle.

(Doc. 437, at 14-15). Nothing has changed in regard to this holding, as the outcome to the trial is still yet to be determined. If anything, the certain result and imminent payment to Class Members should Final Approval be granted, further supports the decision to reach a resolution between the Settling Parties. Accordingly, Final Approval should be granted.

3. Opinions of Class Counsel and Class Representatives

Class Counsel and Representatives still support this Settlement. "'The endorsement of the parties' counsel is entitled to significant weight and supports the fairness of the class settlement.'" *Strano v. Kiplinger Wash. Editors, Inc.*, 649 F. Supp. 3d 546, 559 (E.D. Mich. 2023) (quoting *UAW v. Ford Motor Co.*, No. 07-CV-14845, 2008 U.S. Dist. LEXIS 66899, at *26 (E.D. Mich. Aug. 29, 2008)). This factor supports Final Approval.

4. Reaction of Absent Class Members

As of this date, no objections to the Settlement have been submitted. Direct Notice was sent to over 23,000 Class Members, and their reaction has been favorable in telephone conversations. This response is significant. *See e.g. Office & Prof'l Emps. Int'l Union v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am*., 311 F.R.D. 447, 458 (E.D. Mich. 2015) (objection from "[o]nly one class member" is an "extremely minimal level of opposition" and "is an indication of [the] settlement's fairness") (internal quotation marks omitted); *In re Art Materials Antitrust Litig.*, 100 F.R.D. 367, 372 (N.D. Ohio 1983)("unanimous approval of the proposed settlements by the class members is entitled to nearly diapositive weight in the court's evaluation of the proposed settlements."). The lack of objections and positive reaction supports the entry of Final Approval.

5. The Public Interest

The Court previously stated in the Preliminary Approval Order:

> "Courts have held that 'there is a strong public interest in encouraging settlement of complex litigation and class action suits because they are notoriously difficult and unpredictable and settlement conserves judicial resources." *Doe v. Déjà Vu Consulting, Inc*., 925 F.3d 886, 899 (6th Cir. 2019) (quoting I*n re Cardizen CD Antitrust Litig*., 218 F.R.D. 508, 530 (E.D. Mich. 2003)). These principles are applicable here, and thus support preliminary approval.

(Doc. 437, at 16). This factor is unchanged since the entry of Preliminary Approval and thus supports Final Approval.

V. NOTICE WAS PROPER UNDER RULE 23 AND SATISFIED DUE PROCESS

The extensive Notice procedure employed by Class Counsel and the Settlement Administrator, in accordance with the Court's Preliminary Approval Order, satisfied due process requirements. "[U]pon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3) the court must direct to class members the best notice

that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Rule 23(e)(1) provides that a court must direct notice in a "reasonable manner" to all class members who would be bound by a proposed settlement. Rule 23(e) notice must contain a summary of the litigation sufficient "to apprise interested parties of the pendency of the action and affirm them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950).

For all the reasons set forth in the Court's Preliminary Approval Order, the Notice program and forms of Notice utilized by Plaintiffs satisfy the requirements of Rule 23. *See* Doc. 437, at 16 ("the Court is satisfied with the means that parties have proposed"). As shown in the declaration provided by RG2, the Notice set forth all information required by Rule 23(c)(2)(B) and 23(e)(1) and informed the Class about (1) the settlement terms; (2) the right to object and the manner for objecting to the settlement and Class Counsel's request for fees, expenses, and service awards; and (3) the relevant legal documents like the operative Complaint and all Settlement paperwork submitted to the Court and all Orders regarding Settlement entered by the Court.

Specifically, RG2 and Class Counsel undertook the following activities in an effort to provide Notice to the Class and comply with the Court's directives in the Preliminary Approval Order:

- RG2 contacted the Plan Recordkeepers to obtain a list of Plan Participants who were invested in any Goalmaker Funds from November 11, 2013 to August 21, 2024 in order to determine the list of Class Members;
- RG2 mailed out short-form postcard Notice to the Class Members by September 23, 2024;
- RG2 established the settlement website www.ntaz401ksettlement.com on September 23, 2024;
- The settlement website contained the long-form Notice, along with a section of FAQs, and links to all settlement documentation and other important pleadings, briefs, and Orders related to this lawsuit;

- RG2 established a toll-free hotline and P.O. Box to field inquiries regarding the Settlement and also distributed contact information for Class Counsel;
- Class Counsel also responded to multiple phone calls related to the Settlement from participants who received Notice.

See Doc. 439-1, ¶¶ 6-13; Doc. 440-2, ¶ 12.

In sum, the content of and method for dissemination of Notice fulfill the requirements of Fed. R. Civ. P. 23 and due process.

VI. NOTICE WAS PROVIDED UNDER THE CLASS ACTION FAIRNESS ACT

The Class Action Fairness Act ("CAFA") requires that Defendants notify appropriate state and federal officials of the proposed settlement, allowing 90 days to pass before final approval of the proposed settlement may be entered. See 28 U.S.C. section 1715(d). It is Class Counsel's understanding that the necessary CAFA Notice was sent to all states as of December 18, 2023, and 90 days have passed since CAFA Notice was distributed.

VII. CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests that the Court grant final approval of the Settlement and enter final judgment.

RESPECTFULLY SUBMITTED,

/s/ D G. Pantazis, Jr.
D. G. Pantazis

Counsel for Plaintiffs

OF COUNSEL:
WIGGINS CHILDS PANTAZIS
FISHER GOLDFARB, LLC
The Kress Building
301 Nineteenth Street North
Birmingham, Alabama 35203
(205) 314-0557
dgpjr@wigginschilds.com

James H. White, IV
JAMES WHITE, LLC
2100 1st Ave North, Suite 600
Birmingham, Alabama 35203
(205) 383-1812
james@whitefirmllc.com

Lange Clark
LAW OFFICE OF LANGE CLARK, P.C.
301 19th Street North, Suite 550
Birmingham, Alabama 35203
(205) 939-3933
langeclark@langeclark.com

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2024, the above and foregoing document was filed and served via the Court's CM/ECF system, which will automatically send email notification of such filing to all attorneys of record.

Brian T. Ortelere, Esquire
Jeremy P. Blumenfeld, Esquire
Emily C. Reineberg Byrne, Esquire
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Telephone: (215) 963-5000
Facsimile: (215) 963-5001
jeremy.blumenfeld@morganlewis.com
brian.ortelere@morganlewis.com
emily.reineberg@morganlewis.com

Abbey M. Glenn, Esquire
Mathew J. McKenna, Esquire
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue NW
Washington, DC 20001
Telephone: (202) 739-3000
Facsimile: (202) 739-3001
abbey.glenn@morganlewis.com
Mathew.mckenna@morganlewis.com

Samuel D. Block, Esquire
MORGAN LEWIS & BOCKIUS LLP
110 North Wacker Drive, Suite 2800
Chicago, IL 60606
Tel: (312) 324-1000
Fax: (312) 324-1001
samuel.block@morganlewis.com

David A. Thornton, Esquire
John S. Golwen, Esquire
Jonathan E. Nelson, Esquire
BASS, BERRY & SIMS, PLC
100 Peabody Place, Suite 1300
Memphis, TN 38103
Telephone: (901) 543-5900
Facsimile: (901) 543-5999
dthornton@bassberry.com
jgolwen@bassberry.com
jenelson@bassberry.com

Counsel for Defendant AutoZone, Inc., Steve Beussink, Brian Campbell, Bill Giles, Rick Smith, Kevin Williams, Michael Womack and Kristen Wright

Patrick G. Walker, Esquire
HARRIS SHELTON HANOVER WALSH, PLLC
6060 Primacy Parkway, Suite 100
Memphis, Tennessee 38119
pwalker@harrisshelton.com

David Tetrick, Jr., Esquire
Darren A. Shuler, Esquire
KING & SPALDING LLP
1180 Peachtree Street
Atlanta, Georgia 30309
dtetrick@kslaw.com
dshuler@kslaw.com

Amanda Sonneborn, Esquire
KING & SPALDING LLP
110 N Wacker Drive, Suite 3800
Chicago, Illinois 60606
asonneborn@kslaw.com

Attorneys for Northern Trust Corporation and Northern Trust Investments, Inc.

/s/ D.G. Pantazis
Of Counsel